

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

WILBUR LANN PITTMAN,

Petitioner,

v.

M. MARTEL, Warden, et al.,

Respondents.

Civil No. 10cv0603-DMS (WMC)

**ORDER DISMISSING CASE
WITHOUT PREJUDICE**

Petitioner, a state prisoner proceeding pro se, has filed a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254, but has failed to pay the \$5.00 filing fee and has failed to move to proceed in forma pauperis. Because this Court cannot proceed until Petitioner has either paid the \$5.00 filing fee or qualified to proceed in forma pauperis, the Court **DISMISSES** the case without prejudice. See Rule 3(a), 28 U.S.C. foll. § 2254.

In addition, Petitioner has not filled out the habeas petition form submitted in this action, other than the cover page. Thus, he has provided no information regarding which conviction he is challenging nor any grounds for relief. Title 28, United States Code, § 2254(a), sets forth the following scope of review for federal habeas corpus claims:

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254(a) (emphasis added). See *Hernandez v. Ylst*, 930 F.2d 714, 719 (9th Cir.

1991); Mannhalt v. Reed, 847 F.2d 576, 579 (9th Cir. 1988); Kealohapauole v. Shimoda, 800 F.2d 1463, 1464-65 (9th Cir. 1986). Thus, to present a cognizable federal habeas corpus claim under § 2254, a state prisoner must allege both that he is in custody pursuant to a “judgment of a State court,” and that he is in custody in “violation of the Constitution or laws or treaties of the United States.” See 28 U.S.C. § 2254(a). Petitioner’s failure to identify any grounds for relief in the Petition and failure to identify which, if any, conviction he is challenging, fails to satisfy these pleading requirements.

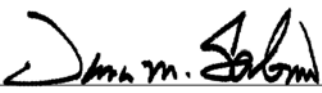
Rule 4 of the Rules Governing Section 2254 Cases provides for summary dismissal of a habeas petition “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court . . .” Rule 4, 28 U.S.C. foll. § 2254. Here, it appears plain from the Petition that Petitioner is not presently entitled to federal habeas relief because he has not satisfied the filing fee requirement and has not provided any grounds for relief.

CONCLUSION AND ORDER

For all the foregoing reasons, the Petition for a Writ of Habeas Corpus is **DISMISSED** without prejudice. If Petitioner wishes to proceed with this case, he must submit, **no later than May 24, 2010**, a copy of this Order with the \$5.00 fee or with adequate proof of his inability to pay the fee and file a First Amended Petition which cures the pleading defects identified above.

IT IS SO ORDERED.

DATED: March 24, 2010


 HON. DANA M. SABRAW
 United States District Judge

CC:ALL PARTIES